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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,866	12/13/2001	Mark G. Meyer	20339.2	6703

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EXAMINER

HARRISON, JESSICA

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 05/04/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/020,866

Applicant(s)

MEYER ET AL.

Examiner

Jessica J. Harrison

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-13,17,18 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-13,17,18 and 20-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

Applicant's amendment of January 27, 2004 is acknowledged. Claims 2, 5, 14-16, and 19 have been cancelled. Claims 1,3,4,6-13,17,18,20-34 remain pending. Claims 1,3,4,6-10,12, 13, 17, 18 and 20 -30 have been amended.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3, 13, 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection. More specifically, the specification fails to support the claimed "allowing a player to stop the game and receive a payout for the total number of wins in the stopped game" as now recited in claim 3 or the similar language of "allowing a player to stop the game and maintain the total number of wins in the stopped game" now recited in claim 18. This language, nor any language similar can be found in the instant disclosure as originally filed. Accordingly, the language is new matter. Furthermore, no support is seen for the now claimed "increasing the payout

amount by more than double for each successive win during a game” of claim 13 or the claimed “includes establishing a doubling payout amount per additional win in a game” as recited now in claim 20. Applicant is requested to direct the examiners attention to the precise lines of original specification where support for the now claimed limitations may be found, or to delete the new matter from the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4,5-13,17 and 20 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Sludikoff et al. ('221), hereinafter Slud.

This rejection is maintained from the prior office action and repeated herein.

Slud discloses a lottery game played by selecting a plurality of multiple digit rows of numbers, and the game is played over a series of draws or days. In implementing Slud's game, at least one player-selected combination of indicia is obtained, a first randomly generated combination of indicia is obtained, matches are determined, a second randomly generated combination

is obtained and the determination made again. Note that the instant claim language does not require the player selected combinations to be the same in the comparison, just that each is "at least one" player selected combination. The more numbers one matches in Slud, the higher the payout, and as the payouts are cumulative over the week with different games and different odds, and the possibility of multiple wins on a single ticket, the payouts are nonlinearly increasing for a plurality of winning rounds of play. The precise manner in which the prize pool is allocated can be tailored to meet the objectives of the lottery sponsor. Slud is implemented using existing on-line equipment, thus utilizes a computer and a networking arrangement. A thorough reading of Slud, given the above interpretations should enlighten all claimed limitations as broadly claimed in the instant application.

Regarding applicant's amendatory language, note that Slud does comprise a series of individual rounds of play where in each round of play a win occurs if a player-selected combination of indicia matches a randomly generated combination of indicia in that Slud may be played over a series of days, with each day's draw being the individual round. A quantity of player select combinations are established when Slud's player fills out his play slip, along with the obtaining of the player selected number of rounds of play. A payout structure is inherently established: see 5:52- 58 at least.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 18 are, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Slud in view of Applicant Admitted Prior Art (AAPA).

The patent to Slud fails to show the now claimed steps of “allowing a player to stop the game and receive a payout for the total number of wins in the stopped game” as now recited in claim 3 or the similar language of “allowing a player to stop the game and maintain the total number of wins in the stopped game” now recited in claim 18. In the instant disclosure at paragraph [0032], Applicant states: “Optional game features include insurance, early cash-out, and rolling cash-pots. It is to be understood that a lottery-type game containing any of all of these features is contemplated to be within the scope of the present invention as will be understood and appreciated by one of ordinary skill in the art.” This is taken to be an admission that a feature known as “early cash-out” is known to one of ordinary skill and as such is an admission that this feature is prior art. It would have been obvious to one of ordinary skill in the art at the time of the invention to enhance that game of Slud with the addition of the known “early cash-out” optional feature as

admitted by applicant, in order to allow a player to stop a game and receive a payout for his wins as is desirably known in the art and therefore attract players to the game.

### ***Response to Arguments***

Applicant's arguments filed January 27, 2004 have been fully considered but they are not persuasive. In making his case for novelty, applicant submits that Slud fails to anticipate in that Slud does not provide any structured payout for multiple wins over several rounds of play, and there is no disclosure or suggestion that one prize will have any relation in amount to another prize. Again, it is noted that Slud teaches structured payout for multiple wins in his suggestion that matching 7 out of 7 pays a jackpot while matching 6 or 5 or less out of seven pays lesser amounts (2:50 – 60 and 5:52-58). Lottery games have an inherent mathematical underpinning that is utilized in determination of the payout structure. This is suggested in referenced col 5 of Slud. Inherently, a higher number of matches results in a higher prize. Furthermore, table 1 makes clear that multiple wins over multiple rounds of play are possible in Slud and Slud also suggests that this multiplicity of games have different odds and different prize structures (col 1:65-68). All this clearly suggests to one of ordinary skill in the art that which is claimed by applicant. Secondly, applicant submits that there is no true random number generation within the rounds of play in Slud, because each number will only occur once in a randomly generated set of numbers. However, applicant's argument is not

commensurate in scope with applicant's claimed "obtaining a randomly generated combination of indicia". Slud clearly obtains a randomly generated combination of indicia and therefore anticipates the claim language.

**Conclusion**

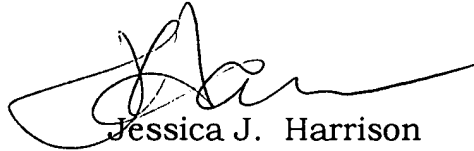
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica J. Harrison whose telephone number is 703-308-2217. The examiner can normally be reached on M-F during business hours.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jessica J. Harrison  
Primary Examiner  
Art Unit 3714

jjh